

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – April 13, 2011

Cable/Video Issues:

- **SB 1087 (Carona)** amends SB5 the state cable/video franchising bill to allow all incumbents to opt out of their city franchises. The bill also eliminates the current requirement to provide INet services at incremental costs and requires cities to report how they use the 1% PEG fee. Passage of the bill(s) would increase the City's cost for INet services beyond current incremental costs to include the value of the INet system and reporting requirements for how PEG fees are used would increase the City's cost to maintain the data and produce the reports. The bill passed the Senate April 6th and has been referred to the House State Affairs Committee. **HB 256 (Hildebran)**, the companion bill, was left pending in committee. Enactment of SB 1087 requires passage of HB 256, (below).
- **HB 256 (Eiland)** imposes a 6 ¼% assessment on all video providers, including satellite service, and allows cable/video providers who now pay city franchise and PEG fees to deduct those fees from the assessment. The state would keep 75% of the assessment and 25% would be distributed to the cities on a prorated per subscriber basis. If satellite service in Austin is about 20% of total cable service, passage of the bill would be increase total cable franchise and PEG fees by about 5% (25% of the 20% of total cable service). The House State Affairs Committee held hearings on the bill March 30th where it is still pending.

Telecom Issues:

- **HB 2620 (Hancock) & SB 980 (Carona)** prohibit any rate or contract regulation of Voice Over Internet Protocol (VoIP), and reduce PUC regulatory authority over telecommunications providers. The bills also prevent the PUC from reregulating telecom markets that have been deregulated, losing consumer protection if competition is lost in a deregulated market, and they reduce PUC authority to require mandatory telephone and local toll-free calling in metropolitan areas, limiting newly annexed areas to participate in the metro service options. (neutral impact on the City since it does not remove access line fees). SB 980 was passed by the Senate on April 7th and is being referred to the House State Affairs Committee with HB 2620.
- **HB 3638 (Hancock)** introduce two service plans into the state Universal Service Fund regulations, (no impact on the City), and is pending in State Affairs Committee.

- **HB 1688 (Raymond)** removes the requirement for Certified Telecommunications Providers (CTPs) to pay for relocations required by road widening or straightening, increasing the City's cost to widen or straighten roads where CTP plant must be relocated. The bill is pending in the House State Affairs Committee.

FEDERAL ACTIVITY:

FCC Order on Pole Attachment Rules

On April 7th, the FCC issued rulings that require utilities to charge the same rate to telecom providers that they charge cable providers and that set maximum timelines for utilities to negotiate agreements, process pole attachment applications and perform the work needed to access the poles or conduit. The rule could reduce the pole attachment fees received by Austin Energy for pole attachments since SB 5 requires municipal electric utilities to set pole attachment rates no higher than is allowed by following the Federal regulations.

CAP Act

We are still waiting for the Community Access Preservation Act bill to be introduced in the House of Representatives to remove the Federal prohibition of using PEG fees for operational expenses. The House has been consumed by budget fights, but it now appears that the bill will be introduced in later in April. We are working with state and national organizations to obtain support for the bill. Passage of the bill will allow the PEG fees paid to the City by cable/video providers to be used for operational expenses as well as capital expenses.

FCC to Issue Notice of Inquiry (NOI) in April with the strong likelihood of establishing that local governments are a "barrier to broadband deployment" that need to be torn down by the agency, and to make the federal government the arbiter of local rights-of-way practices and rights-of-way fees. In Austin, these fees are more than \$34 million annually, about 8 percent of total General Revenues. Several mayors, including Mayor Leffingwell, have sent letters to Vice President Biden with copies to Texas Congressional Delegation and to FCC Chairman Julius Genachowski expressing opposition to the NOI.

Moratorium on Internet Taxes and Electronic Commerce

There has been no movement on **S.135 (John Ensign, R-Nevada)**: A bill to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent. The current legislation banning Internet taxation will not expire until 2013.

Cell Tax Fairness Act

The bill sponsored by Zoe Lofgren D. Cal. prohibits any State or local jurisdiction from imposing a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property, during the 5-year period beginning on the date of enactment of this Act. Hearings are expected to be held March 29th in the Judiciary Committee. The bill would limit the City's authority to collect fees from the mobile service industry.

FCC Moves to Shift Phone Subsidy to Rural Broadband

The Federal Communications Commission on Tuesday moved to begin the process of overhauling the \$8 billion federal telephone subsidy to redirect funding to broadband service in rural areas. The notice of proposed rulemaking (NPRM), approved by a unanimous vote, also outlines a path for reforming the system of payments among telephone providers for exchanging local and long-distance calls, known as intercarrier compensation.

In the long term, the FCC is looking to consolidate the USF programs into a single Connect America Fund, which would shift funding toward broadband and away from telephone service without increasing the price tag of the fund. Transitioning to the Connect America Fund was a central piece of the national broadband plan the FCC issued last March.

COURTS:

Appeal of Ruling on Texas Cable Association and TWC Suit on SB 5

The Cable Assoc. and Time Warner Cable's Initial Brief to the Fed. 5th Cir on the SB 5 Appeal was filed Monday, Jan. 31, 2011.

The brief has two points of error, with multiple subparts. In point of error I, subpart C., on the Municipal Reliance interest in the unexpired local franchises that were grandfathered by SB 5 was challenged as being unlawful. Clarence West will be filing a Reply Brief on behalf of TCCFUI on the proper lawful use of the grandfathering in SB 5 to protect that Municipal Reliance/Grandfathering issue in SB 5 and in the lawful use of grandfathering in any future legislation involving municipal negotiated contracts. If the cable and satellite bills now pending in the Texas legislature are adopted, this suit would probably be dismissed.